

Federal Court



Cour fédérale

Date: 20190508

Docket: IMM-2268-18

Citation: 2019 FC 603

Toronto, Ontario, May 8, 2019

PRESENT: Mr. Justice Campbell

BETWEEN:

VAHAP KAYA AND SEYDA KAYA

Applicants

and

**THE MINISTER OF IMMIGRATION,
REFUGEES AND CITIZENSHIP CANADA
AND THE MINISTER OF PUBLIC SAFETY
AND EMERGENCY PREPAREDNESS**

Respondents

JUDGMENT AND REASONS

[1] The Applicants are a wife and husband who are Kurdish-Alevis with Turkey citizenship. In June 2016, the Applicants had a hearing before the RPD, which resulted in the RPD rejecting their claim for refugee status on September 29, 2016. The Applicants thereafter applied for a Pre-Removal Risk Assessment [PRRA] and filed their submissions on March 28, 2017. The present Application for Judicial Review concerns their negative PRRA decision dated March 19, 2018.

[2] In the decision, the PRRA Officer states that “I have conducted my own independent research into country conditions in Turkey following the refugee decision” (Decision, p 7). The PRRA Officer considered two UK Home Office reports which were published in August 2017, approximately five months after the Applicants’ PRRA submissions were submitted. Under the heading “Objective Evidence”, the PRRA Officer relies solely on these two reports to conclude that:

Based on the above objective evidence, it is clear that conditions for Kurdish/Alevi are far from ideal in Turkey. Both my independent research and the objective articles provided on behalf of the applicants demonstrate how Kurdish/Alevi have been targeted by segments of society within Turkey. Nevertheless, the objective evidence shows that with specific reference to those with the Alevi profile, the state has provided adequate protection.

(Decision, p 10).

[3] The Applicants submit that the PRRA Officer breached procedural fairness by improperly relying on extrinsic documentary evidence, which was published after receipt of their PRRA submissions, without disclosing the evidence to them. The PRRA Officer’s discussion of the reports comprises approximately half of the total analysis in the decision. Therefore, I find that the PRRA Officer breached the duty of procedural fairness owed to the Applicants by not disclosing this extrinsic evidence and providing the Applicants with an opportunity to respond to it.

[4] Accordingly, I find that the decision was rendered in reviewable error and must be set aside.

JUDGMENT IN IMM-2268-18

THIS COURT'S JUDGMENT is that the decision presently under review is set aside, and the matter is referred back to a differently constituted panel for determination.

There is no question to certify.

“Douglas R. Campbell”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-2268-18

STYLE OF CAUSE: VAHAP KAYA AND SEYDA KAYA v
THE MINISTER OF IMMIGRATION,
REFUGEES AND CITIZENSHIP CANADA

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: APRIL 29, 2019

JUDGMENT AND REASONS: CAMPBELL J.

DATED: MAY 8, 2019

APPEARANCES:

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